

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
(HOUSTON DIVISION)

GAYATHRI MURTHY,  
Plaintiff,

v.

ABBOTT LABORATORIES,  
Defendant.

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CASE #: 4:11-cv-00105-KPE

**RESPONSE TO NOTICE OF ADDITIONAL AUTHORITY**

Not surprisingly, before the ink was even dry on the opinion, Abbott filed its Notice of Additional Authority [Doc. 168] bringing the discretionary exclusionary decision of Judge Denise Casper in the *Calisi v. Abbott* case to this Court's attention. It is true. She struck Dr. Hamrell's warnings testimony. Ironically, the principal First Circuit case that she cited in support of her ruling, *Milward v. Acuity Specialty Products Grp., Inc.*, 639 F.3d 11 (1st Cir. 2011) was one in which a similar discretionary decision under Rule 702 was reversed for abuse of discretion. But, be that as it may be, Abbott won that case. It will be appealed in due course.

There are numerous reasons why the *Calisi* decision is in error and inapposite. We will be glad to address them in briefing or argument as the Court may desire.

Meanwhile, however, as prior pleadings point out, to the extent that this Court chooses to be guided by discretionary decisions of other courts concerning Dr. Hamrell's testimony, we cite once again to Judge Sippel's decision in the MDL case of *In re Celexa & Lexapro Products Liab. Litig.*, MDL 1736, 2013 WL 791784 (E.D. Mo. Mar. 4, 2013) and to Judge Haddad's decision in *In Re Humira Litigation: Delores Tietz and Milton Tietz v. Abbott Laboratories*, Case No. L002715 (April 16, 2013), in the Circuit Court of Cook County, previously filed with the Court. Both found Dr. Hamrell to be sufficiently well-qualified and similar testimony to be admissible.

Respectfully submitted,

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Certificate of Service

I certify that on this 27<sup>th</sup> day of September, 2013, Plaintiff's Response to Defendant's Notice of Additional Authority has been electronically filed with the Clerk using the CM/ECF system, which will automatically send email notifications of such filing to the following attorneys of record:

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